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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re ANTHONY R.,

a Person Coming Under the Juvenile Court Law.

B220037
(Los Angeles County
Super. Ct. No. CK78932)

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

BENJAMIN R., et al.,

Defendants and Appellants.

APPEALS from an order of the Superior Court of Los Angeles County,
Donna Levin, Referee. Affirmed.

Jesse F. Rodriguez, under appointment by the Court of Appeal, for
Defendant and Appellant Benjamin R.

Janette Freeman Cochran, under appointment by the Court of Appeal, for
Defendant and Appellant, Hayley P.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, and Navid Nakhjavani, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Benjamin R. (Father) and Hayley P. (Mother) appeal from jurisdictional findings and the ensuing dispositional order that removed their son, Anthony R., from their physical custody, and ordered reunification services. Mother and Father contend that the evidence was insufficient to justify the juvenile court's finding of jurisdiction pursuant to Welfare and Institutions Code section 300, subdivisions (a) and (b).¹ The parents also contend that the evidence was insufficient to demonstrate that removal of Anthony from their custody was required to protect Anthony. We disagree and affirm the juvenile court's order.

FACTUAL AND PROCEDURAL BACKGROUND

The Section 300 Petition

The Los Angeles County Department of Children and Family Services (DCFS) received a referral in late August 2009 alleging general neglect of Anthony (born in August 2007) by Mother and Father. The referral indicated that Mother and Father were using methamphetamines in the child's presence, were unable to properly care for him, and have a history of engaging in domestic violence. In addition, the referral stated that Mother has a serious medical condition that interferes with her ability to care for Anthony. Mother and Father

¹ All undesignated statutory references are to the Welfare and Institutions Code.

reportedly had an open dependency case in Spokane, Washington, but they had abruptly left that area and come to Los Angeles, where Father has relatives.

DCFS social workers went to the motel in Southern California where Mother and Father reportedly were staying, but no one was checked in under their names. They went to the home of the paternal great grandmother but she said she had not seen Mother and Father for several weeks and did not know where they were. The paternal great grandfather said he had not seen them in a year.

Child Protective Services (CPS) in Washington told DCFS that Mother and Father had an open case based on multiple calls alleging drug use by the parents and domestic violence, both in Anthony's presence, but the court had not yet assumed jurisdiction over Anthony. Mother had participated in a family team decision-making meeting with the maternal grandmother in July 2009, and had agreed to find a pediatrician for Anthony, participate in counseling to address domestic violence issues, and to remain in her parents' home and not take Anthony to meet Father. Mother suffers from diabetes, and maternal grandmother reported that her condition had always been uncontrolled. Mother had also agreed to find a doctor to monitor her condition. She had tested positive for marijuana in June 2009. The Washington social worker said that Mother and Father had gone back and forth from Washington to Los Angeles, and had not been cooperative with a case plan. The social worker said Mother was much more stable when she was living with the maternal grandmother in Spokane. The social worker also said that they had received a referral prior to Anthony's birth because Mother had not been receiving prenatal care, and had admitted to using methamphetamines. Mother's previous pregnancy had resulted in a stillbirth at eight months gestation because of her health problems. Mother tested negative for drugs at Anthony's birth, but he was placed in the neonatal intensive care unit because of Mother's diabetes.

The maternal grandmother told the DCFS social worker that Mother had abruptly left for California with Father and they were “running from CPS.” She said both parents had issues with drugs and that Father was violent toward Mother. She expressed concern about Mother’s diabetes and thought Mother should be in a hospital because her kidneys were failing.

DCFS social workers again visited the home of the paternal great grandparents on September 8, 2009, one week after receiving the referral. The paternal great grandfather now said that Mother and Father had been there the previous week but he did not know where they were. The paternal great grandmother said she had not seen them, and believed Mother had returned to Washington. The social workers returned to the motel, and discovered that Mother and Father were registered there under the paternal great grandmother’s name, and they had been there for three weeks. Mother and Anthony were in the room. Although she denied any drug use, Mother appeared to be under the influence of drugs; her eyes were partially closed and she appeared unconcerned about the investigation. Mother admitted that they had left Spokane without informing the social workers, but she said she was not aware she had to tell them. There was no food or milk in the room for Anthony, but Mother said Father had gone to the store to buy some milk. Father returned with chips, candy, and ice pops. He said he had forgotten to buy milk. He appeared agitated by the social workers’ presence, and seemed to be under the influence of drugs. Father also denied any current drug use, and both parents refused to agree to submit to drug testing. Father said he was going to the store to buy milk, and took Anthony with him, but he did not return.

The social workers returned to the motel later that day with the police, but the parents said Anthony was with the paternal great grandmother. The paternal great grandmother was not at home, however, and the paternal relatives were

uncooperative in locating her and Anthony. Eventually the paternal great grandmother brought Anthony to the police station as instructed, and he was taken into protective custody. He appeared to be in good physical and emotional condition, although it was noted that he was two years old and spoke no intelligible words. The parents were instructed to submit to a drug test the following day, September 9, 2009, but they did not do so.

DCFS filed a section 300 petition regarding Anthony on September 11, 2009, alleging pursuant to section 300, subdivision (b), that Mother had a history of illicit drug abuse, including methamphetamine use, and was a current abuser of drugs, which rendered her incapable of providing regular care for the child and endangered his physical and emotional health and safety. DCFS further alleged that Father had a history of illicit drug abuse and was a current abuser of marijuana, which rendered him incapable of providing regular care for the child and endangered Anthony's physical and emotional health and safety.

The September 11, 2009 detention report indicated that DCFS had received a referral in April 2009 indicating Father was physically abusing both Mother and Anthony. A social worker investigated, and observed that although Mother denied using drugs, she had scabs and marks on her face and the appearance of a methamphetamine user. Mother refused to submit to a drug test. The social worker deemed the allegations inconclusive. In June 2009, CPS in Washington received a referral alleging the parents' drug use and domestic violence. Mother declined services and refused to drug test, saying she was not planning to stay in the area. Father also refused to drug test.

At the detention hearing, the court found a prima facie case existed for detaining Anthony, and the matter was set for trial. The court ordered monitored three-hour visits for the parents three times per week. DCFS was ordered to

provide the parents with family reunification services, and Mother and Father were to be referred for weekly drug testing and on-demand drug testing. Mother's counsel objected pursuant to section 355 to the use of statements made by the maternal grandmother and the out-of-state social workers, which were contained in DCFS's report.

The Amended Petition

On September 24, 2009, DCFS filed an amended petition which alleged, pursuant to section 300, subdivision (a), that Mother had physically abused Anthony, including striking him with her hands, grabbing his neck, and pushing him to the ground, resulting in bruises and marks on his body. The amended petition also alleged that Mother and Father had a history of domestic violence which endangered the child's physical and emotional health and safety.

DCFS reported in its jurisdiction and disposition report that Washington CPS had provided the parents with services from April 2008 through August 2009. The parents were to participate in (1) alcohol and drug abuse treatment programs, to include random testing, (2) individual counseling, (3) a parenting program, (4) a substance abuse 12-step program, (5) a domestic violence program, and (6) anger management. Father was on probation and had to abide by conditions of his probation, and Mother had to seek regular care from her medical provider. Mother and Father reportedly were angry about the allegations and felt CPS should close the case. In fact, the social worker's notes from October 2008 indicated that because neither parent would cooperate, the social worker planned to file a petition with the court in an effort to get the parents involved, but the family left and went to California.

Mother had no criminal history in California, but reportedly had one in Washington, though DCFS had not yet received the records. In 2006, Father had been convicted in Washington of domestic violence; in 2008 he was convicted of drug possession.

Mother and Father told DCFS that the maternal grandmother had fabricated the allegations about Mother physically abusing Anthony in June 2009 because the grandmother was very controlling and she wanted Anthony to stay with her. They said the police had investigated and found no marks on the child, and allowed the child to remain with the parents. In fact, the Washington police observed a red mark on the back of the child's leg and bruising on the side of his neck. Mother told them she did not know what caused the marks. Mother admitted she slapped the child's leg because he was resisting sitting in his car seat. The maternal grandmother reported that Mother had gotten frustrated with Anthony and grabbed his neck. The following day, she pushed him away from her and he fell and hit his head on the floor. The maternal grandfather said he saw Mother push Anthony to the ground, and heard her slap his leg. Both grandparents said Mother was a drug addict, and that she had very little patience with Anthony. The maternal grandmother said she would get up every morning to take care of Anthony because Mother was on drugs and would sleep all day, waking up only to eat. Mother denied these incidents occurred. Mother also denied any domestic violence in her relationship with Father. She said that on one occasion Father had thrown her phone during an argument and broken it, but usually during arguments she would start to yell and Father would simply leave. Father said they yelled at one another in front of Anthony, but the child did not cry when they did so.

The maternal grandmother also reported that Father cracked Mother's front tooth when they were arguing and he pushed a glass from which she was drinking

into her face. Mother denied the incident, saying she cracked her tooth herself while drinking from a mug. The maternal great aunt said she had never witnessed any domestic violence between the parents. However, she had received many telephone calls from Mother saying that she and Father fought constantly, and once Mother said Father had hit her during an argument. Mother and Father's landlord in Washington reported to CPS that the police had been called to their apartment numerous times due to domestic disputes between Mother and Father.

Mother admitted that she had a major substance abuse problem with methamphetamines when she was 18 or 19, and used it daily; Mother was then 23 years old. She also said she smoked marijuana, and that there was considerable marijuana use in her parents' home as she was growing up. She said she had used marijuana on a daily basis during July and August of 2009 while staying with her parents, who used it daily. Father also admitted to smoking marijuana during that time. The maternal great aunt said that Mother had lost a lot of weight, and sometimes appeared intoxicated and was "really bad looking with scabs on her face." She often asked Mother if she was "on something," but Mother never responded. A report from CPS in Washington indicated that Mother had tested positive for methamphetamines in September 2008 when she went to the emergency room because of her high blood sugar level. The paternal great grandmother said she did not know anything about the allegations. She noted that Mother took medication for her diabetes, and speculated that that could make her appear to be under the influence of narcotics.

Father denied any current drug use. He admitted to smoking marijuana recreationally in the past, but said it was holding him back from normal life and made him lazy and unproductive, so he stopped. He denied ever smoking in Anthony's presence. He said he was starting school and wanted to get a good job

to provide for his family. Mother said Father used to smoke marijuana on a daily basis. Both parents continued to refuse to drug test. On September 9, 2009, they missed a scheduled drug test; on September 10, 2009, they both said they were unable to provide a urine sample; on September 14, 2009, they submitted to drug testing, and Father tested positive for marijuana and Mother tested negative.

The DCFS social worker concluded that Anthony had been exposed to a detrimental home environment consisting of physical abuse, substance abuse, emotional abuse, verbal threats and ongoing family disputes and domestic violence. Both parents minimized the domestic violence. Mother said she did not think she needed parenting or substance abuse counseling, but that she would do whatever they told her to do to get Anthony returned to her. Father said he did not need drug counseling, and that he and Mother were getting along very well but he was not opposed to some kind of counseling to make their relationship closer.

The social worker noted that visits between Anthony and the parents had been occurring as ordered, and there were no problems or concerns regarding the visits.

Mother's counsel was unavailable due to illness for the adjudication hearing set for September 24, 2009, and the matter was continued for one month. In an addendum report, DCFS reported that Mother had tested positive for alcohol on September 24, 2009, and failed to appear for a drug test on October 6, 2009. Father had negative drug tests on September 23 and 30, and October 13, and failed to appear for a drug test on October 6, 2009.

A DCFS social worker visited the parents' home on October 5, 2009. The residence consisted of a living room, bathroom, and small kitchen. There was a mattress on the living room floor, and Mother pointed out a corner where a crib could be placed. Mother laughed when the social worker informed her that she had

tested positive for alcohol, and denied having a drink since she was 18 years old. Mother said she was not participating in any programs, as another social worker told her she did not need to take parenting classes until Anthony was returned to her care. She said she lost the list of referrals she had been given. Father arrived at the residence later, and he also said that they had been told they only needed to take parenting once the child was returned to them. Father denied that Mother used alcohol.

DCFS filed a written response to the section 355 objections made by Mother's counsel regarding the introduction into evidence of statements made by the maternal grandmother.

The Jurisdiction and Disposition Hearing

The jurisdiction and disposition hearing was held on October 29, 2009. Mother's counsel objected to the admission into evidence of any statements made by the maternal grandmother which were included in the social worker's reports, arguing that they constituted hearsay and their admission did not qualify under the *Malinda S.* exception,² and because Mother should have the right to cross-examine and confront witnesses. Father's counsel joined in the objection. Counsel for DCFS responded that the social worker was present and could testify regarding the reports, and the maternal grandmother was available by telephone to be cross-examined. In addition, the maternal grandmother's statements were not the sole basis upon which DCFS was relying to establish dependency jurisdiction. The

² *In re Malinda S.* (1990) 51 Cal.3d 368, partially superseded by statute, as stated in *In re Lucero L.* (2000) 22 Cal.4th 1227, 1240-1242.

court stated that it would admit the maternal grandmother's statements, and permit her to be cross-examined by telephone.

The social worker for DCFS was called to testify, and stated that Father was convicted of domestic violence in Washington. When the social worker questioned Father about the conviction, Father responded that he and Mother only had verbal arguments. The DCFS social worker testified to his understanding that CPS in Washington was planning to file a petition regarding Anthony, and would have done so if the parents had remained in Washington.

Mother testified that she spanked Anthony on the leg once with her hand, but said it did not leave a mark. Regarding the allegations of physical abuse, Mother said that her parents were lying when they reported that she had pushed Anthony backwards and caused him to hit his head on the floor, leaving a lump on the back of his head. She said that she and Father argued, but they had never hit one another. She explained that Father's domestic violence conviction did not involve her; rather, it involved his stepfather. She denied current use of methamphetamines; she said she began using methamphetamines when she was 18 and continued until she was 19, but she had not used it since then. She disputed that she tested positive for methamphetamines in late 2008 when she was taken to the emergency room. She testified that she last used marijuana when she was staying at her mother's home in June 2009, and admitted she had used marijuana during her pregnancy with Anthony, including two days before he was born. Mother said she missed one drug test because she did not know about it. She denied drinking alcohol, and said the positive test result from September 24, 2009, must have been a mistake. Mother stated that she had always refused to provide a urine test because she should not have to provide one without a court order.

However, she would submit to drug testing in order to get Anthony returned to her custody.

Counsel for DCFS informed the court that she had spoken to maternal grandmother, who was ill with the flu and unable to answer questions by telephone. Counsel inquired whether Mother's counsel would want to question the maternal grandmother on a different day, and Mother's counsel responded, "We'll just argue a few issues." Father's counsel agreed.

Mother's counsel argued that the allegations in count (a)(1) should be dismissed because Mother's slapping the child's leg does not rise to the level of physical abuse described in section 300, subdivision (b). She also argued there was insufficient evidence of domestic violence to support count (a)(2). Finally, she argued that DCFS had failed to show a nexus between Mother's drug history and her failing to provide regular care for the child.

Counsel for Father argued that there was no nexus between Father's alleged substance abuse and any abuse or neglect of the child. In addition, counsel pointed out that Father was not present when the alleged physical abuse took place.

The court sustained count (a)(1) regarding Mother's physical abuse of Anthony, as amended to delete the allegation that Father failed to protect the child. The court also sustained counts (b)(1) and (b)(2) regarding Mother's and Father's histories of substance abuse placing the child at risk of physical and emotional harm. Finally, the court sustained the allegation in count (b)(4) that Mother and Father had a history of domestic violence which endangered Anthony.

Father was ordered to participate in parenting education, and random drug testing at least twice per month. If he missed a test or tested positive, he would be required to complete a full substance abuse program with random testing. He was also ordered to participate in a program of domestic violence counseling that

included anger management; he would be assessed after completing 26 weeks of counseling and if he had made suitable progress, he would not be required to continue. Father and Mother were ordered to participate in conjoint counseling. Mother was also ordered to participate in parenting classes, and to submit to random drug testing at least twice per month, and if she missed any tests or tested positive she would be required to complete a full substance abuse program. Individual counseling for Mother was to address anger management, depression, and domestic violence. The court ordered monitored visitation for the parents, but did not specify the frequency or duration of visits. Anthony was to remain suitably placed in foster care.

These timely appeals by the parents followed.

DISCUSSION

I. Standard of Review

Before asserting jurisdiction over a minor, the juvenile court must find that the child comes within one or more of the categories specified in section 300. (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 185 (*Veronica G.*)) The burden is on DCFS to “““prove by a preponderance of the evidence that the child . . . comes under the juvenile court’s jurisdiction.””” (*Ibid.*, quoting *In re Shelley J.* (1998) 68 Cal.App.4th 322, 329.) “On appeal from an order making jurisdictional findings, we must uphold the court’s findings unless, after reviewing the entire record and resolving all conflicts in favor of the respondent and drawing all reasonable inferences in support of the judgment, we determine there is no substantial evidence to support the findings. [Citation.] Substantial evidence is evidence that is reasonable, credible, and of solid value.” (*Veronica G.*, *supra*, 157 Cal.App.4th at p. 185.) Issues of fact and credibility are questions for the trier of fact, and we

may not reweigh the evidence. (*In re Jasmine C.* (1999) 70 Cal.App.4th 71, 75.) “If there is any substantial evidence, contradicted or uncontradicted, which will support the judgment, we must affirm.” (*In re Tracy Z.* (1987) 195 Cal.App.3d 107, 113.)

“When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court’s jurisdiction, a reviewing court can affirm the juvenile court’s finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence. (*Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 72; *In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875-876.)” (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.) In addition, the section 300 petition need only contain allegations against one parent to support the exercise of the court’s jurisdiction. (*In re Jeffrey P.* (1990) 218 Cal.App.3d 1548, 1553-1554.) Thus, in order to successfully argue for reversal of the juvenile court’s order adjudicating Anthony to be a dependent of the court, the parents would have to demonstrate that no basis exists for any of the jurisdictional findings made against either of them.

II. The Jurisdictional Findings

A. Substance Abuse

Mother and Father both argue on appeal that the trial court erred in finding that Anthony was a child described by section 300, subdivision (b), based on their failure or inability to provide regular care for Anthony due to their substance abuse. We disagree.

Mother admitted that she abused methamphetamines up until four years ago, and that she smoked marijuana on a daily basis as recently as June 2009, a few months before the section 300 petition was filed. She also smoked marijuana while she was pregnant with Anthony. After the section 300 petition was filed, she failed to drug test on three occasions beginning in September 2009, and tested positive for alcohol once. Mother testified at the jurisdictional hearing that she had not used methamphetamines since she was 19 (and she was then 23), but she acknowledges in her brief on appeal that in fact she tested positive for methamphetamines as recently as September 2008. When DCFS social workers first contacted Mother at the motel, she appeared to be under the influence of drugs of some kind. Shortly before initiation of this case, Mother's parents both described her as a drug addict, and said that she got frustrated and angry with Anthony, attributing her lack of coping skills to her drug abuse. The maternal grandmother said that when Mother was staying with them around June 2009, she would get up every morning to take care of Anthony because Mother was on drugs and would sleep all day, waking up only to eat. Around the same time, her great aunt said she had lost a lot of weight, sometimes appeared intoxicated, and was "really bad looking with scabs on her face."

This evidence was more than sufficient to establish that Mother was a current abuser of illicit drugs, and that her drug use interfered with her ability to regularly care for Anthony. Her initial refusal to drug test, her dishonesty regarding when she last used methamphetamines, her missed drug tests, and her recent personal appearance all indicate that Mother continued to struggle with methamphetamine addiction. Likewise, her use of marijuana during her pregnancy, and her daily use of it as recently as August 2009, demonstrate that

substance abuse is a current problem for her. Moreover, the maternal grandparents observed that her drug use interfered with her ability to parent Anthony.

We note that Mother and Father objected to the admission into evidence of any statements made by the maternal grandmother, but did not object to statements made by the maternal grandfather and the maternal great aunt. In any event, the statements made by the maternal grandmother were properly relied upon by the trial court. Section 355, subdivision (b) provides: “A social study prepared by the petitioning agency, and hearsay evidence contained in it, is admissible and constitutes competent evidence upon which a finding of jurisdiction pursuant to Section 300 may be based, to the extent allowed by subdivisions (c) and (d).” Subdivision (c)(1) provides in relevant part that “[i]f any party to the jurisdictional hearing raises a timely objection to the admission of specific hearsay evidence contained in a social study, the specific hearsay evidence shall not be sufficient by itself to support a jurisdictional finding or any ultimate fact upon which a jurisdictional finding is based,” unless the petitioner establishes that the hearsay declarant is available for cross-examination. The statements made by the maternal grandmother were not the sole evidence relied upon by DCFS to support any of the allegations or jurisdictional findings.

Regarding Father’s substance abuse, in September 2009 Father admitted to DCFS that he had used marijuana, but he denied current use; however, he tested positive for it on September 14, 2009. He said that he stopped using marijuana because it was holding him back from normal life and because it made him lazy and unproductive. He said he stopped using it because he wanted to better provide for his family. Mother said Father used to smoke marijuana on a daily basis.

This evidence was sufficient to support the court’s finding of jurisdiction. Father admitted that marijuana interfered with his normal functioning and ability to

provide for his child. He admitted that he had used it on August 8, 2009, when the family took a bus to come to Los Angeles. Although he said he did not smoke in front of Anthony, he admitted to being under the influence of marijuana while Anthony was in his care. Thus, Father's statements alone indicated that his drug use was recent and interfered with his ability to provide regular care for Anthony. The jurisdictional finding to that effect was supported by substantial evidence and, in addition, the maternal grandmother stated that Father and Mother were frequent users of both methamphetamines and marijuana. Though Father had refused to drug test for CPS in Washington, that agency reported that Mother and Father had an open case based on multiple calls alleging drug use by the parents, in Anthony's presence.

B. Domestic Violence

Mother and Father also contend on appeal that the evidence was insufficient to support the jurisdictional finding that they had a history of engaging in domestic violence which endangered Anthony's health and safety. We disagree.

The maternal great aunt said she had not witnessed any domestic violence between the parents, but she had received many telephone calls from Mother saying that she and Father often fought, and Mother said Father had hit her during an argument. The maternal grandmother said that Father was controlling of Mother, that they fought frequently, and that Father had once chipped Mother's tooth by pushing a glass into her face during an argument. The CPS social worker in Washington reported receiving multiple calls alleging Anthony was being exposed to domestic violence. Mother and Father's landlord reported to CPS that the police had been called to their apartment numerous times due to domestic disputes between Mother and Father. Although the parents contend that some of

the referrals in Washington were determined to be unfounded or inconclusive, it is clear from the record that as of July 2009 CPS in Washington considered Anthony to be at substantial risk because of the parents' domestic violence, drug abuse, and transient lifestyle. DCFS did not credit Mother's denials that Father abused her and opined that both parents minimized the effects their hostile relationship had on Anthony.

As both parents concede, “[D]omestic violence in the same household where children are living *is* neglect; it is a failure to protect [them] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it.” (*In re S.O.* (2002) 103 Cal.App.4th 453, 460-461, quoting *In re Heather A.* (1996) 52 Cal.App.4th 183, 194.) We conclude that the evidence before the juvenile court was sufficient to support the juvenile court's finding that the parents engaged in domestic violence that placed Anthony at risk of harm.

C. Physical Abuse

Mother contends that the evidence in the record does not support the juvenile court's finding that Anthony was a person described by section 300, subdivision (a). She argues that a jurisdictional finding under that section requires evidence of “serious physical harm inflicted nonaccidentally upon the child.” Mother is incorrect.

While there was no evidence that Anthony had been seriously physically harmed by Mother, the statute does not require that serious physical harm be inflicted before jurisdiction is appropriate. Rather, subdivision (a) of section 300 provides that children fall within the jurisdiction of the juvenile court when there is

“a substantial risk that the child will suffer[] serious physical harm.”³ Substantial evidence supports the trial court’s finding under section 300, subdivision (a). On one occasion, Mother pushed Anthony backwards causing him to hit his head. On another, she slapped his leg, leaving a red mark. On yet another, she grabbed his neck, leaving a mark. This evidence demonstrates that Mother presents a substantial risk of inflicting serious physical harm on Anthony, particularly when considered with the constellation of allegations regarding this family’s precarious situation, including Mother’s poor health and lack of self-care, Mother’s and Father’s drug use and violent altercations, and the family’s financial instability and transience. Mother’s claim that the evidence was insufficient to support jurisdiction under section 300, subdivision (a), is meritless.

III. The Disposition Order

Mother and Father argue on appeal that there was insufficient evidence to support removing Anthony from their custody. In addition, Father contends that the court erred in not stating the facts on which it based its decision to remove Anthony from parental custody, and further asserts that an implied finding of detriment is not supported by this record. Finally, the parents contend that the court erred by failing to discuss whether reasonable alternatives existed to removing Anthony from parental custody.

³ Section 300, subdivision (a) provides that a child may be adjudged a dependent of the court if he or she meets the following description: “(a) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child’s parent or guardian. For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child’s siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm.”

We conclude that substantial evidence supports the juvenile court's disposition order and, although the better practice would have been for the court to specifically state the facts on which it based its finding that removal was necessary (§ 361, subd. (d)), any error in that regard is harmless. The evidence is sufficiently clear that we may imply findings. (*In re Marquis D.* (1995) 38 Cal.App.4th 1813, 1828-1829.)

Section 361, subdivision (c)(1) provides that a dependent child may not be removed from parental custody unless the juvenile court finds by clear and convincing evidence that there would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and that there exist no reasonable means by which the minor's physical safety can be protected without removing the minor from the parent's physical custody. Thus, "[t]he parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate." (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136, disapproved on another ground in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6.)

Although the parents characterize the evidence leading to assumption of jurisdiction as negligible and unsubstantiated, the record paints a very different picture. The evidence supports the implied finding that both parents are substance abusers. Coupled with Mother's physical abuse of Anthony, the domestic violence which the court found to be of current concern, and the unstable living conditions of the family, the evidence amply demonstrates that Anthony was at risk of harm if he remained in his parents' custody.

Subdivision (d) of section 361 requires that "The court shall state the facts on which the decision to remove the minor is based." The court's failure in this case to make the required findings was error; "[h]owever, cases involving a court's

obligation to make findings regarding a minor's change of custody or commitment have held the failure to do so will be deemed harmless where 'it is not reasonably probable such finding, if made, would have been in favor of continued parental custody.'" (See *In re Jason L.* (1990) 222 Cal.App.3d 1206, 1218-1219, and cases cited therein.) Here, had the lower court fully complied with subdivision (d), it undoubtedly would have made findings adverse to Mother and Father. The disposition order was supported by clear and convincing evidence. Therefore, the court's failure to make the required findings was harmless error.

In addition, section 361, subdivision (c)(1) states that the juvenile court may not remove a child from the physical custody of his or her parents, unless it finds by clear and convincing evidence that "there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's . . . custody." Based on this statutory language, the parents contend that the court failed to consider reasonable alternatives to removal, such as allowing Anthony to remain in the parents' home under close supervision, with in-home counseling, while the parents participated in court-ordered services. Mother contends that this would mitigate any risk to Anthony. Father suggests that the child could have been safely returned to him if Mother were absent from the home.⁴

⁴ Father points to language in section 361, subdivision (c)(1) which provides that the court "shall consider, as a reasonable means to protect the minor, the option of removing an offending parent or guardian from the home. The court shall also consider, as a reasonable means to protect the minor, allowing a nonoffending parent . . . to retain physical custody as long as that parent . . . presents a plan acceptable to the court demonstrating that he or she will be able to protect the child from future harm." This portion of the statute is inapplicable where, as here, both parents were considered offending parents as a result of the court's jurisdictional findings.

The parents overlook the fact that they left Washington with an open case pending, without informing the social worker. When DCFS first contacted the family at a motel, Father left with the child, purportedly to buy milk, but did not return. Soon thereafter, they placed Anthony in the paternal great grandmother's care, and the parents and the paternal relatives resisted DCFS's efforts to locate the child. The risk that they would flee with Anthony if he remained in their care was obvious, and that risk undoubtedly factored into the court's assessment in finding that no reasonable means existed of protecting the child without depriving the parents of custody. The court concluded that the parents needed to participate in drug testing, parenting education, and counseling to address the case issues, before they could safely parent Anthony. The removal order was not issued simply to secure the parent's compliance with the court's orders. The parents had demonstrated an abiding resistance to submitting to state intervention, and they were unlikely to commit to engaging in services designed to enable them to safely parent their child if they had the option of leaving the state with Anthony. The juvenile court implicitly determined that the risk of physical harm to Anthony was too great to leave him in parental custody, a determination that finds adequate support in the record. In view of the evidence before the court here, we find no error.

IV. The Visitation Order

Mother challenges the visitation order because it did not specify the frequency of visits. DCFS filed a motion in this court requesting that we consider additional evidence, namely, an order of the juvenile court dated March 22, 2010, which specified that the monitored visits are to take place a minimum of three times per week, three hours per visit, for a minimum of nine hours per week. We

granted DCFS' motion, and conclude that the March 22, 2010 minute order demonstrates that Mother's challenge of the visitation order on the ground it failed to specify the number of visits is moot.

Mother also contends that the evidence was not sufficient to support the court's order that her visits with Anthony be monitored. We disagree. As discussed at length above, substantial evidence demonstrates that Mother posed a risk of harm to Anthony, making the juvenile court's determination that monitored visits were necessary entirely appropriate.

DISPOSITION

The order of October 29, 2009, is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, J.

We concur:

EPSTEIN, P. J.

SUZUKAWA, J.